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2012 IL App (3d) 110623-U

Order filed January 5, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

<i>In re</i> D.H.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Rock Island County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-11-0623
	)	Circuit No. 07-JA-118
v.	)	
	)	
Shannon H.,	)	Honorable
	)	Raymond J. Conklin,
Respondent-Appellant).	)	Judge, Presiding.

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JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Lytton and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court's findings that the respondent failed to make reasonable progress toward the return home of her minor child and that it was in the minor's best interest to terminate her parental rights were not against the manifest weight of the evidence.

¶ 2 The trial court found the respondent, Shannon H., unfit to parent the minor, D.H.

Following a best interest hearing, the trial court determined that it was in the minor's best interest

to terminate the respondent's parental rights. The respondent appeals, arguing that: (1) the State failed to prove that she was unfit; and (2) the trial court's finding that it was in the minor's best interest to terminate her parental rights was against the manifest weight of the evidence. We affirm.

¶ 3

### FACTS

¶ 4 D.H. was born on August 26, 2007. On August 28, 2007, the State filed a juvenile petition alleging that D.H. was neglected in that he tested positive for cocaine shortly after his birth. D.H. was placed into temporary shelter care. On October 2, 2007, the respondent stipulated to the facts in the petition, and the trial court adjudicated the minor neglected. The agency handling D.H.'s case recommended that D.H. remain in foster care and that the respondent: (1) obtain and maintain stable housing; (2) obtain and maintain stable employment; (3) obtain a substance abuse evaluation and follow recommended treatment; (4) obtain a psychological or psychiatric evaluation and follow recommended treatment; and (5) cooperate with individual counseling. On November 6, 2007, the trial court entered a dispositional order indicating that reasonable efforts and services aimed at family reunification had been made to keep the minor in the home, but they had not eliminated the necessity for removal of the minor from the home because the respondent was still in substance abuse treatment. The trial court adopted the agency's recommendations.

¶ 5 On May 12, 2011, the State filed a petition to terminate the respondent's parental rights, alleging that the respondent: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare; (2) exhibited substantial neglect of the minor that was continuous or repeated; (3) failed to make reasonable progress toward the return of the minor in

any nine-month period after the end of the initial nine-month period following adjudication of neglect, with said time period being August 11, 2010, to May 11, 2011; and (4) suffered from habitual addiction to drugs.

¶ 6 On July 11, 2011, a hearing on the State's termination petition took place. The caseworker, Cynthia Felske, testified that she had been the case manager assigned to the respondent's case since July 8, 2008. Felske testified that the respondent tested positive for opiates and cocaine on October 15, 2010, and did not comply with requests for drug tests on November 16, 2010, or January 3, 2011. From August 4, 2010, until February 3, 2011, the respondent attended 64% of her weekly visits with the minor. The respondent was in jail from March 19 until April 7, 2011. She was arrested again on June 28, 2011, and released on bond. The trial court found that the respondent did not make reasonable progress in the specified nine-month period and also found the respondent unfit on the three remaining alleged grounds of unfitness. The case proceeded to a best interest hearing.

¶ 7 On August 22, 2011, at the best interest hearing, Felske testified that D.H. had been in the same foster home since he was three days old. D.H. was comfortable in his foster home and was an accepted member of the family. D.H. was very bonded to his foster family, and his foster parents were willing to adopt him. D.H. referred to his foster mother as "mom" and his foster father as "dad." Felske testified that D.H. did not want to visit with the respondent.

¶ 8 The respondent testified that she was not fighting the termination of her parental rights because she wanted to get D.H. "out of the system." She testified that she thought the best placement for D.H. was with her sister, who had already taken the respondent's six-year-old daughter into her home in Mississippi. The respondent's sister was willing to adopt D.H.

¶ 9 The respondent testified that she had charges of felony theft and drug possession pending against her, and she was currently out of jail on bond. After the respondent testified, the State requested that the court take judicial notice that the respondent had already pled guilty to the felony theft charge in exchange for the drug charge being dropped, and her sentencing hearing was scheduled for September 3, 2011.

¶ 10 The trial judge found that it was in the best interest of the minor that the respondent's parental rights be terminated. The respondent appealed.

¶ 11 ANALYSIS

¶ 12 On appeal, the respondent first argues that the trial court's finding that she was unfit was against the manifest weight of the evidence on all four grounds of unfitness. We disagree that the trial court erred in finding the respondent unfit.

¶ 13 Section 1(D) of the Illinois Marriage and Dissolution of Marriage Act (Act) defines an unfit person as "any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption." 750 ILCS 50/1(D) (West 2010). Pursuant to section 1(D)(m)(iii) of the Act, a parent will be found unfit for failing to make reasonable progress during any nine-month period after the end of the initial nine-month period following an adjudication of a neglected or abused minor. 750 ILCS 50/1(D)(m)(iii) (West 2010). Reasonable progress is an objective standard that requires demonstrable movement toward the goal of reunification. *In re C.N.*, 196 Ill. 2d 181 (2001). The benchmark for measuring a parent's progress toward the return of the child encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of any other conditions that later become known and would

prevent the court from returning custody of the child to the parent. *C.N.*, 196 Ill. 2d 181. A parent has made reasonable progress when the court can conclude that the parent's progress in complying with directives given for the return of the child is of such quality that the court will be able to order the child returned to the parent in the near future. *In re Aaron R.*, 387 Ill. App. 3d 1130 (2009).

¶ 14 A finding of unfitness must be by clear and convincing evidence. *In re D.F.*, 201 Ill. 2d 476 (2002). We review the trial court's unfitness determination under the manifest weight of the evidence standard. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990). A trial court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based upon the evidence presented. *D.F.*, 201 Ill. 2d 476.

¶ 15 Here, the record indicates that during the nine-month period, the respondent was still using drugs, arrested and put in jail for almost three weeks, refused to cooperate with random drug drops, and missed many visits with the minor. In her brief on appeal, the respondent conceded that "she was unable to maintain reasonable progress during [the specified] period." Consequently, the trial court's finding that the respondent failed to make reasonable progress from August 11, 2010, until May 11, 2011, was not against the manifest weight of the evidence.

¶ 16 We need not address the other grounds of unfitness because the State is only required to prove one ground of unfitness to find the respondent unfit. See *In re D.J.S.*, 308 Ill. App. 3d 291 (1999).

¶ 17 The respondent also argues on appeal that the trial court's finding that it was in D.H.'s best interest to terminate the respondent's parental rights was against the manifest weight of the

evidence. Once the trial court has found the parent to be unfit, all considerations must yield to the best interest of the minor. *In re D.T.*, 212 Ill. 2d 347 (2004). Accordingly, at the best interest hearing, the focus shifts from the parent to the child's interest in a stable, loving home life. *D.T.*, 212 Ill. 2d 347. At the best interest stage, the State must prove by a preponderance of the evidence that termination of parental rights is in the minor's best interest. *D.T.*, 212 Ill. 2d 347. In considering a minor's best interest, the trial court must consider certain statutory factors in light of the minor's age and developmental needs, including: (1) the physical safety and welfare of the minor; (2) the development of the minor's identity; (3) the familial, cultural and religious background of the minor; (4) the minor's sense of attachment, including love, security, familiarity, and continuity of relationships with his parental figures; (5) the wishes of the minor; (6) the minor's community ties; (7) the minor's need for permanence, including stability and continuity of relationships; and (8) the preferences of persons available to care for the minor. 705 ILCS 405/1-3(4.05) (West 2010). On appeal, a trial court's decision to terminate the rights of a parent to their child will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31 (2005).

¶ 18 Our review of the record indicates that the State proved by a preponderance of the evidence that it was in the minor's best interest to terminate the respondent's parental rights. The minor had been in his current foster home for four years, and referred to his foster parents as "mom" and "dad." The minor has bonded with his foster family, and his foster parents are willing to adopt him. The minor's aunt was also willing to adopt him so that he could be raised with his biological sister.

¶ 19 To the extent that the respondent argues that the trial court erred in failing to consider her

preference for the minor's aunt to adopt D.H., her contention is meritless. Having been found unfit by the court, the respondent's parental rights could be terminated regardless of her consent to the appointment of DCFS as the minor's guardian or her consent to whoever may adopt the minor in the future. *In re C.R.*, 164 Ill. App. 3d 142 (1987). Once a court orders that parental rights be terminated, one of the residual rights lost is the right to consent to the adoption of one's children. See 705 ILCS 405/4-27 (West 2010).

¶ 20 Therefore, we hold that the circuit court's best interest determination to terminate the respondent's parental rights and name the Department of Children and Family Services as guardian with power to consent to the adoption of D.H. was not against the manifest weight of the evidence.

¶ 21

#### CONCLUSION

¶ 22 The judgment of the circuit court of Rock Island County is affirmed.

¶ 23 Affirmed.